

Subramaniam Dhanapakiam v Ghaanthimathi

HIGH COURT (SINGAPORE) — MC SUIT NO 7041 OF 1990
CHAN SEK KEONG J
22 JANUARY 1991

Moneylenders — Friendly loan — Interest not demanded but voluntarily paid — Whether statutory presumption of moneylending applies — Moneylenders Act (Cap 188, 1985 Ed), s 3

Civil Procedure — Summary judgment — Claim for moneys lent — Whether moneylending actions can be disposed of by summary judgment — Whether presumption of moneylending applies — Moneylenders Act (Cap 188, 1985 Ed), s 3

The plaintiff applied for summary judgment in respect of non-payment of a friendly loan extended to the defendant. It was shown that the plaintiff did not ask for interest but the defendant did pay interest of her own accord. The defendant submitted that the \$10,000 claimed comprised both the principal sum and interest; additionally it was submitted that the statutory presumption in the Moneylenders Act (Cap 188, 1985 Ed) ('the Act') applies, whereby a person who lends money in return for a larger consideration is presumed to be a moneylender. The registrar accepted that the statutory presumption applied, and granted unconditional leave to defend, holding that whether the plaintiff was a moneylender was a matter of fact to be tried in each case. The plaintiff appealed against the registrar's decision.

Held, allowing the appeal:

(1) In the present case, the loans were friendly loans between two long-time friends. Interest was not demanded but accepted when offered. The interest was not exorbitant and varied in accordance with the generosity of the defendant. The plaintiff did not lend to all and sundry. On these facts, there was no question of the plaintiff being a moneylender as defined in the Act. If there had been a trial, the result would have been the same.

(2) The registrar's decision to give unconditional leave to defend could not be right. The registrar's approach implied that the statutory presumption that the plaintiff was a moneylender (which was a rebuttable presumption), could not be rebutted at that stage of the proceedings but only at trial. There is no such rule. It was a question of evidence, and on the evidence before the registrar, the plaintiff was, in fact not a moneylender. The other admitted facts were sufficient to rebut the presumption.

Cases referred to

- 1 *Newton v Pyke* (1908) 25 TLR 127 (folld)
- 2 *Esmail Sahib v Noordin* [1951] MLJ 98 (refd)
- 3 *Litchfield v Dreyfus* [1906] KB 584 (folld)

Legislation referred to

Moneylenders Act (Cap 188, 1985 Ed) s 3

Nithiananthan Sugidha for the plaintiff/appellant.
Gurdaib Singh for the defendant/respondent.

Cur Ado Vult

Chan Sek Keong J: This was an appeal by the plaintiff against the decision of the registrar giving unconditional leave to the defendant to defend the plaintiff's claim which was founded on a friendly loan. After hearing

A submissions from counsel for both parties, I came to the conclusion that this was a clear case where the defendant had no defence. But because the registrar had misunderstood the law in relation to a claim of a type that frequently arose in the subordinate court, I said I would give my reasons for allowing the appeal.

B The following facts were admitted by the defendant. The plaintiff was a housewife. The defendant was a business-woman. They were old friends, their friendship going back to 1965. They have been living in the same block of flats since mid-1982. The plaintiff gave loans to the defendant at the latter's request from time to time and against her post-dated cheques because of their friendship. The plaintiff did not ask for or stipulate any amount of interest, but the defendant paid interest on these loans at her own initiative at rates decided by her. The rates of interest varied from time to time and from loan to loan. The plaintiff accepted the interest.

C That was the general background of the loans. In this action, the plaintiff sued the defendant for the sum of \$9,600 being the balance of a loan of \$10,000 given to her. The loan and the amount unpaid were acknowledged in a letter signed by the defendant dated 23 April 1990. She had also given a post-dated cheque for \$10,000 which was dishonoured when the plaintiff presented it for payment. After the defendant defaulted on the loan, she offered to pay \$100 interest but the plaintiff rejected the offer.

D The defence was that the loan of \$10,000 was rolled over from and made up of a series of five or six loans given on a number of occasions over a period of two or three years, and that it included both principal and interest. In essence, the defence was that the plaintiff had given a series of loans to the defendant for which she had received interest.

E Defence counsel contended before the registrar that the defendant's version of the facts gave rise to a presumption that the plaintiff was a moneylender and that accordingly she was entitled to unconditional leave to defend. Counsel relied on s 3 of the Moneylenders Act (Cap 188, 1985 Ed) ('the Act') which reads:

G Save as excepted in paragraphs (a) to (e) of the definition of 'moneylender' in Section 2, any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary is proved to be a moneylender.

H The registrar accepted the argument. He held that the statutory presumption applied. He also decided that whether a person was a moneylender was a question of fact which had to be tried in each case, citing *Newton v Pyke*.¹ He distinguished the two authorities cited to him by counsel for the plaintiff, viz *Esmail Sahib v Noordin*² and *Litchfield v Dreyfus*³ on the ground that they were trial cases and not O 14 applications. Accordingly, he gave unconditional leave to defend.

I

The law as stated in *Litchfield v Dreyfus*³ was not challenged by counsel for the defendant. In that case, Farwell J (at p 589), in relation to the Moneylenders Act 1900, said:

But not every man who lends money at interest carries on the business of moneylending. Speaking generally, a man who carries on a moneylending business is one who is ready and willing to lend to all and sundry, provided that they are from his point of view eligible. I do not of course mean that a moneylender can evade the Act by limiting his clientele to those whom he chooses to designate as 'friends' or otherwise: it is a question of fact in each case.

The above statement was accepted by Walton J in *Newton v Pyke*¹ who went on to say that 'it was not enough merely to show that a man had on several occasions lent money at remunerative rates of interest; there must be a certain degree of system and continuity about the transactions.'

Both decisions were followed in Singapore by Spenser-Wilkinson J in *Esmail Sahib v Noordin*.² In that case, the judge also commented on the difference between the English Act and the Singapore Ordinance as follows:

There is however one important difference between the English law on this subject and the local law. Section 3 of the Moneylenders Ordinance reads as follows:

3 Save as excepted in paragraphs (a), (b), (c), (d) and (f) of the definition of 'Moneylender' in section 2, any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary be proved, to be a moneylender.

Counsel were unable to cite any local authority which could assist me in determining the effect of this section and I have been in some doubt as to the extent of the burden of proof cast by this section upon a plaintiff who has in fact lent money at interest. It is difficult to see how else a plaintiff can discharge this burden except by himself giving evidence to the effect that he is not a moneylender and by submitting to cross-examination on the point.

The settled law is that what is prohibited by the Act was not moneylending but the business of moneylending. This is a question of fact. It is also settled law that the giving of a number of loans to friends does not constitute the business of moneylending, unless there is a system and continuity about the transactions. In *Litchfield v Dreyfus*,³ Farwell J said (at p 590):

... it would be a straining of the language of the Act to hold that a man who so obliges friends is carrying on the business of a moneylender. The Act was intended to apply only to persons who are really carrying on the business of moneylending as a business, not to persons who lend money as an incident of another business or to a few old friends by way of friendship. The particular Act was supposed to be required to save the foolish from the extortion of a certain class of the community who are called moneylenders as an offensive term. Moneylending is a perfectly respectable form of business. Nobody says that bankers are rascals because they lend money.

A In the present case, the defence was no defence. The loans were friendly loans between two long-time friends. Interest was not demanded but accepted when offered. The interest was not exorbitant and varied in accordance with the generosity of the defendant. The plaintiff did not lend to all and sundry. On these facts, there was no question of the plaintiff being a moneylender as defined in the Act. If there had been a trial, the result would have been the same.

B That being the legal position, the registrar's decision to give unconditional leave to defend could not be right. The registrar's approach implied that the statutory presumption that the plaintiff was a moneylender (which was a rebuttable presumption) could not be rebutted at that stage of the proceedings but only at the trial. There is no such rule. It was a question of evidence, and on the evidence before the registrar, the plaintiff was, in law, not a moneylender. The other admitted facts were sufficient to rebut the presumption.

C The appeal was accordingly allowed and final judgment given for the plaintiff.

D *Appeal allowed.*

Solicitors: *Tan Rajah & Cheah; Gurdaib & Co.*

E Reported by *Azra Moiz*

Malayan Banking Bhd v Kim Produce Pte Ltd & Ors and another action

F HIGH COURT (SINGAPORE) — SUIT NOS 1979 OF 1981 AND 1980 OF 1981
SINNATHURAY J
19 JANUARY 1991

Banking — Guarantee — Execution of guarantee by guarantors — Rescission — Misrepresentation — Plea of non est factum

G *Contract — Rescission — Misrepresentation — Plea of non est factum*

H The plaintiffs, Malayan Banking Berhad, brought two actions, which are consolidated in this action against Ong Chi Hui @ Ong Sing Chiat @ Ong Yue Hwee ('Ong') and Loi Sai Kwang ('Loi') as guarantors under two letters of guarantee. Ong is the fifth defendant in Suit No 1979 of 1981 ('the first suit') and the third defendant in Suit No 1980 of 1981 ('the second suit'). Loi is the sixth defendant in the first suit and the fourth defendant in the second suit. In both the actions Ong and Loi gave guarantees in favour of Kim Produce Pte Ltd ('Kim Produce'), the principal debtor in the first suit and T Bin (Singapore) Pte Ltd ('T Bin'), the principal debtor in the second suit. The two guarantees were given in consideration of the plaintiffs granting credit facilities to Kim Produce and T Bin. The plaintiffs had already obtained judgment against Kim Produce and T Bin in respect of moneys owing to the plaintiffs and the sole issue was the question of liability or otherwise of Ong and Loi under the two guarantees to make good the sums owed by Kim Produce and T Bin. The applications were made on Kim Produce and T Bin's behalf by